



**US Army Corps
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The Construction Forum

from the Field to the Field

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1. The Construction Forum (CF) is a newsletter-type publication which provides the field with a means for expressing their views, questions, suggestions, and particularly significant lessons learned. Articles are submitted to HQUSACE Construction Division (CEMP-CP) for publication. The CF is published as often as needed.

2. The following article on proper documentation and mutual understanding of contract issues was submitted to the Construction Forum by Mr. Dave Porter of the Construction-Operations Division of the Memphis District, Lower Mississippi Valley Division:

a. Documentation. This is that “something” many of us dread, or at least dislike to do. Too often we allow the rush of the days events to cause us to not adequately document certain incidents that took place because we do not think much of it at the time. These little bits of time that we save early on can become quite expensive later when the claim arrives or when differences in understandings/opinions arise. In construction contract administration “too much” is better than “too little” when documentation is the subject. However, with the reduced number of personnel, “too much” has become essentially nonexistent. Emphasis must be placed on the quality of the documentation. Keep it real, current, concise, and complete.

b. Daily QC and QA Construction Reports. Recently a contractor requested additional compensation for delays due to the unavailability of borrow material for a lime stabilized embankment. This occurred after the matter was previously resolved by mutual agreement and after compensating the contractor for delays caused by the Government which involve the borrow material only. While it was true the embankment placement was further delayed, the QC and QA reports documented that the additional delay was caused by the late delivery of lime. In this regard, the QA report simply stated: “Delay no lime delivered”, “Received only 1 load of 6 today”. These statements are short but say a lot about what, and who, was responsible for some of the delay. The contractor had hauled sufficient borrow material to have resumed embankment placement but did not have the necessary lime. Even briefer statements have helped the Engineer Board of Contract Appeals (ENGBCA) reach a decision in the past in similar cases. But in the absence of any records or statements by either the government or the contractor, to document key points on disputed issues, the ENGBCA could not support the claimant's position, but relied on the facts as shown in the contract documents.

c. Contractor Partnering and Mutual Understanding: The construction contracting arena contains its share of those with selective memory, second guessers, perceivers of the appearance of give-aways, etc. Therefore, this method of applying and using good business practice does not eliminate the need to document the partnering meetings, agreements, and other actions pertinent to the

contract and the work. In other words, retain and maintain correct and proper contract administration procedures and records. Every word need not be recorded, but the mutually accepted essence of meetings, actions, etc., must be established. This record will provide a base to return to, should the contract go off course. Recent experience shows that “partnerships” will deteriorate in the absence of records which clearly reflect the mutual understandings and agreements made. Such deterioration may go to the claim stage on matters thought to have been mutually agreed upon. In conclusion, partnering cannot be founded on poor contract administration practices.

d. It seems we don’t have the time to make a short record, but this may result in having to find an abundance of time for an attorney, contract manager/administrator, ACO, COR, area/resident engineer, and others to analyze and battle a claim which may have been prevented through proper documentation and mutual understanding at the outset.

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